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IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Yuri SHEFLER

Conf. 9618

Application No. 10/530,202

Group 1794

Filed November 1, 2005

Examiner Vera Stulii

VODKA AND A PROCESS FOR THE PRODUCTION OF VODKA

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

May 17, 2010

Sir:

Applicants request a pre-appeal brief review of the final rejection in the above-identified application. No amendments are being filed with this request.

A Notice of Appeal is filed herewith.

The review is requested for the reasons advanced on the attached sheets.

Respectfully submitted,

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REASONS IN SUPPORT OF REQUEST FOR REVIEW

A pre-appeal brief review is respectfully requested because the ground of rejection maintained in the Final Official Action of November 16, 2009 (herein "Final Action") includes at least one factual error and at least one legal error, as explained in detail below:

I. The combination of claim 10.

Independent claim 10 describes a high quality vodka composition, which includes specific amounts of sugar, flax seed, and bicarbonate, and levels of impurities.

a. The claimed low levels impurities.

None of JAMNIKOV, BOBRYSEV and FILIPPOVA discloses or suggests the claimed amount of impurities, or their absence.

b. The claimed 0.05 - 0.2 mM of bicarbonate.

None of JAMNIKOV, BOBRYSEV and FILIPPOVA mentions bicarbonate, or suggest its addition.

The Examiner acknowledges that "JAMNIKOV is silent to the amount of bicarbonates in vodka", but the Examiner's position was bicarbonate is intrinsically present in the water used for preparing vodka.

While some known water supplies may comprise an amount of bicarbonate, there is no evidence that bicarbonate would be present in the vodka of JAMNIKOV.

Indeed, to the contrary, JAMNIKOV, as well as BOBRYSEV, teaches pretreating water by reverse osmosis for the purpose of demineralization. JAMNIKOV discloses that pretreated water used to make the vodka may comprise calcium, magnesium, copper, aluminum, silicium, sulfates, chlorides and phosphates (Page 3, right column, lines 19-27), not bicarbonate. Thus, if there were any bicarbonate in the water, one of ordinary skill in the art would have expected it to be present in the resulting vodka, as there is no mention of it after the water pretreatment, or demineralization step.

Thus, it is a factual error to conclude that proposed combination teaches or suggests the composition of claim 10.

II. The process of claim 12.

Independent claim 12 is directed to a process for preparing vodka, which includes

- treating a mixture of water and alcohol with activated coal, and
- cooling the mixture to a temperature of -10°C to -15°C, which is maintained for about 4-8 hours.

a. The claimed activated coal treatment step.

JAMNIKOV fails to teach an activated coal treatment step. Instead, JAMNIKOV replaces an active coal filtration step by a cooling step to -4°C to remove impurities. See, e.g., page 3, left column, last line.

BOBRYSHV fails to teach an activated coal treatment.

FILIPPOVA teaches cooling over activated coal.

However, to even approach the claimed invention would have rendered the process of JAMNIKOV unsatisfactory, and, thus, one of ordinary skill in the art would have been discouraged from adding active coal filtration step to JAMNIKOV.

b. The claimed cooling step.

JAMNIKOV fails to teach a freezing step below -4°C .

BOBRYSHV fails to teach any cooling.

FILIPPOVA fails to teach a cooling step as claimed. FILIPPOVA teaches cooling a mixture for a first treatment step over activated coal for 0.5 to 5 minutes at -45°C to -22°C and a second treatment step over activated coal for 0.5 to 10 minutes from about 5°C to 20°C .

Thus, the combination fails to teach cooling to -10°C to -15°C for about 4-8 hours.

Furthermore, there is no suggestion to even approach the claimed cooling step.

Furthermore, there would have been no suggestion to even approach the claimed cooling step. That is, there would have been no reason to increase a cooling time to 4-8 hours, based on FILIPPOVA's teaching of less than 10 minutes, or even select a temperature range outside of either cooling step suggested by FILIPPOVA (-45°C to -22°C or $5-20^{\circ}\text{C}$) and far lower than that suggested by JAMNIKOV (e.g., -4°C).

Therefore, the rejection of claim 12 includes both factual and legal errors.

III. The combination fails to teach the process of claim 18.

Independent claim 18 is directed to a process for preparing vodka, which includes:

- treating a mixture of water and alcohol with activated coal, and
- cooling the mixture after treatment with activated coal to a temperature of -10°C to -15°C, which is maintained for about 4-8 hours.

a. The claimed activated coal "pretreatment".

JAMNIKOV fails to teach either an activated coal treatment. Indeed, JAMNIKOV replaces an active coal filtration step by a cooling step to -4°C to remove impurities. See, e.g., page 3, left column, last line.

BOBRYSHV fails to teach an activated coal treatment.

FILIPPOVA fails to treat a pretreatment with activated coal before a cooling step.

Nevertheless, to even approach the claimed invention would have rendered the process of JAMNIKOV unsatisfactory, and, thus, one of ordinary skill in the art would have been discouraged from adding active coal filtration step to JAMNIKOV.

b. The claimed cooling step.

JAMNIKOV fails to teach a freezing step below -4°C.

BOBRYSHV fails to teach any cooling.

FILIPPOVA fails to teach a cooling step as claimed. FILIPPOVA teaches cooling a mixture for a first treatment step over activated coal for 0.5 to 5 minutes at -45°C to -22°C and a second treatment step over activated coal for 0.5 to 10 minutes from about 5°C to 20°C.

Thus, the combination fails to teach cooling to -10°C to -15°C for about 4-8 hours.

Furthermore, there would have been no suggestion to even approach the claimed cooling step. That is, there would have been no reason to increase a cooling time to 4-8 hours, based on FILIPPOVA's teaching of less than 10 minutes, or further select a temperature range outside of either cooling step suggested by FILIPPOVA (-45°C to -22°C or 5-20°C) and far lower than that suggested by JAMNIKOV (e.g., -4°C).

Therefore, the rejection of claim 18 includes both factual and legal errors.

IV. Conclusion

In view of the least one clear legal error and at least one clear factual error discussed above, the rejection should be withdrawn and this application allowed.